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1 UNITED STATES PATENT AND TRADEMARK OFFICE

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4 BEFORE THE BOARD OF PATENT APPEALS
5 AND INTERFERENCES
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8 *Ex parte* JAMES W. BRINSFIELD and GEORGE M. HUTCHINSON
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11 Appeal 2008-1360
12 Application 09/689,374
13 Technology Center 3600
14

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16 Decided: May 20, 2008
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19 Before HUBERT C. LORIN, ANTON W. FETTING, and
20 DAVID B. WALKER, *Administrative Patent Judges*.
21 FETTING, *Administrative Patent Judge*.

22 DECISION ON APPEAL

23 STATEMENT OF CASE

24 James W. Brinsfield and George M. Hutchinson (Appellants) seek
25 review under 35 U.S.C. § 134 of a final rejection of claims 1-31, the only
26 claims pending in the application on appeal.

1 We have jurisdiction over the appeal pursuant to 35 U.S.C. § 6(b)
2 (2002).

3 We AFFIRM.

4 The Appellants invented a two-way, wireless clinical patient information
5 monitoring system and a portable patient monitor (Specification 1:1-3). It is
6 a wireless, bi-directional, portable patient monitoring device for integration
7 with patient monitoring systems interfaces to receive, process, display, and
8 allow for changes in patient care parameters. A communication interface of
9 the device transmits and receives patient data from a wireless local area
10 network (WLAN) within a medical facility. A processor connected to the
11 communication interface processes patient data and parameters, displays the
12 data in human discernable form on the device display, and implements
13 changes in care parameters (Specification 3:7-14).

14 An understanding of the invention can be derived from a reading of
15 exemplary claim 1, which is reproduced below (bracketed matter and some
16 paragraphing added).

17 1. A wireless bi-directional portable patient monitor
18 comprising:

19 [1] a communication interface having

20 a wireless local area network (WLAN) input

21 to receive patient data from a WLAN within a
22 medical care facility and

23 a WLAN output

24 to transmit care parameters as needed to the
25 WLAN;

26 [2] a processor

27 connected to the communication interface

1 to process the patient data and the care parameters;
2 [3] a display
3 connected to the processor
4 to display the processed patient data in human
5 discernable form; and
6 [4] an input device
7 connected to the processor
8 to allow a change in the care parameters by a health care
9 provider.

10 This appeal arises from the Examiner's final Rejection, mailed June 1,
11 2006. The Appellants filed an Appeal Brief in support of the appeal on
12 December 18, 2006. An Examiner's Answer to the Appeal Brief was mailed
13 on April 10, 2007. A Reply Brief was filed on June 11, 2007.

14 PRIOR ART

15 The Examiner relies upon the following prior art:

Gombrich	4,857,716	Aug. 15, 1989
Fuchs	5,788,646	Aug. 4, 1998
Ballantyne	5,867,821	Feb. 2, 1999
Jacobsen	6,160,478	Dec. 12, 2000
Maschke	6,221,012 B1	Apr. 24, 2001
Gallant	6,705,990 B1	Mar. 16, 2004

16 REJECTIONS

17 Claims 1-7, 9, 12-14, and 18-22 stand rejected under 35 U.S.C. § 103(a)
18 as unpatentable over Maschke and Jacobsen.

1 Claims 8, 26, 28, and 29 stand rejected under 35 U.S.C. § 103(a) as
2 unpatentable over Maschke, Jacobsen, and Fuchs.

3 Claim 10 stands rejected under 35 U.S.C. § 103(a) as unpatentable over
4 Maschke, Jacobsen, Ballantyne, and Gallant.

5 Claims 11 and 24 stand rejected under 35 U.S.C. § 103(a) as
6 unpatentable over Maschke, Jacobsen, and Gombrich.

7 Claims 15-17 and 25 stand rejected under 35 U.S.C. § 103(a) as
8 unpatentable over Maschke, Jacobsen, and Ballantyne.

9 Claim 23 stands rejected under 35 U.S.C. § 103(a) as unpatentable over
10 Maschke, Jacobsen, Ballantyne, Gallant, and Fuchs.

11 Claims 27 and 31 stand rejected under 35 U.S.C. § 103(a) as
12 unpatentable over Maschke, Jacobsen, Fuchs, and Gombrich.

13 Claim 30 stands rejected under 35 U.S.C. § 103(a) as unpatentable over
14 Maschke, Jacobsen, Fuchs, and Ballantyne.

15 ISSUES

16 The issues pertinent to this appeal are

- 17 • Whether the Appellants have sustained their burden of showing that
18 the Examiner erred in rejecting claims 1-7, 9, 12-14, and 18-22 under
19 35 U.S.C. § 103(a) as unpatentable over Maschke and Jacobsen.
- 20 • Whether the Appellants have sustained their burden of showing that
21 the Examiner erred in rejecting claims 8, 26, 28, and 29 under 35
22 U.S.C. § 103(a) as unpatentable over Maschke, Jacobsen, and Fuchs.

- 1 • Whether the Appellants have sustained their burden of showing that
2 the Examiner erred in rejecting claim 10 under 35 U.S.C. § 103(a) as
3 unpatentable over Maschke, Jacobsen, Ballantyne, and Gallant.
- 4 • Whether the Appellants have sustained their burden of showing that
5 the Examiner erred in rejecting claims 11 and 24 under 35 U.S.C.
6 § 103(a) as unpatentable over Maschke, Jacobsen, and Gombrich.
- 7 • Whether the Appellants have sustained their burden of showing that
8 the Examiner erred in rejecting claims 15-17 and 25 under 35 U.S.C.
9 § 103(a) as unpatentable over Maschke, Jacobsen, and Ballantyne.
- 10 • Whether the Appellants have sustained their burden of showing that
11 the Examiner erred in rejecting claim 23 under 35 U.S.C. § 103(a) as
12 unpatentable over Maschke, Jacobsen, Ballantyne, Gallant, and Fuchs.
- 13 • Whether the Appellants have sustained their burden of showing that
14 the Examiner erred in rejecting claims 27 and 31 under 35 U.S.C.
15 § 103(a) as unpatentable over Maschke, Jacobsen, Fuchs, and
16 Gombrich.
- 17 • Whether the Appellants have sustained their burden of showing that
18 the Examiner erred in rejecting claim 30 under 35 U.S.C. § 103(a) as
19 unpatentable over Maschke, Jacobsen, Fuchs, and Ballantyne.

20 The pertinent issue turns on whether Maschke describes the output of
21 element [1] and the input device of element [4] in claim 1.

FACTS PERTINENT TO THE ISSUES

The following enumerated Findings of Fact (FF) are believed to be supported by a preponderance of the evidence.

Facts Related to Claim Construction

01. Element [1] in claim 1 is a communication interface having an input and output. Although element [1] describes data that may pass through the input and output, nothing in a communication interface would generate such data. Therefore the scope of element [1] is electrical wireless LAN structure capable of passing such data as input and output.

02. Element [4] in claim 1 is an input device. Although element [4] describes allowing a change in care parameters by a health care provider, nothing in element [4] would actually cause such a change. Therefore the scope of element [4] is an input device that has the capacity to allow a change in care parameters by a health care provider.

03. The Specification contains no lexicographic definition of care parameters.

Maschke

04. Maschke is directed to a patient monitoring apparatus for display of patient data. This includes sensors from which patient data are collected and a data acquisition cartridge which selectively communicates with the sensors. The data acquisition cartridge collects patient data from a selected sensor and transmits

1 conditioned data signals produced from the patient data to a
2 portable monitor. The apparatus also includes an independently
3 positionable, self contained data acquisition pod that selectively
4 communicates with the sensors. The portable monitor detachably
5 couples to the data acquisition cartridge and the data acquisition
6 pod and receives and stores the conditioned data and the further
7 conditioned data (Maschke 2:43-63).

8 05. Maschke describes an embodiment of its portable monitor as
9 being an intelligent workstation (Maschke 5:17-20). Those of
10 ordinary skill knew that such workstations had both a processor
11 and a display.

12 06. Maschke describes and portrays a communication network
13 interface having an input to receive patient data (Maschke Figs. 2
14 & 4:Lines of communication between the pods, sensors and
15 cartridges and the monitor 102).

16 07. Maschke describes how the detachable coupling of the data
17 acquisition modules, and in particular for its pods, is intended to
18 include any manner of communicating the acquired data signals to
19 monitor, such as a wireless communication link (Maschke 3:39-
20 43).

21 08. Maschke's portable monitor displays the physiological data
22 (Maschke 4:4).

23 09. Maschke's docking station provides mechanical support for
24 mounting the portable monitor, as well as electrical couplings to a

1 remote display device. The docking station can also communicate
2 with several local area networks (LANs). The docking station
3 provides a simple mechanism to connect portable monitor with
4 several devices and networks without the need to connect
5 individual cables (Maschke 5:10-21).

6 10. Maschke describes using a conventional random access
7 memory card for information storage and transfer. The
8 information stored in the memory card includes setup data (e.g.,
9 alarm limits), patient specific demographic and physiological
10 trend data, and software. Typically, the memory card will be used
11 when transferring patient data between two different portable
12 monitors (Maschke 8:17-26).

13 11. Maschke describes using its memory card to associate a
14 respective card with each patient from admission to checkout,
15 providing rapid access to the patient's history at any time during
16 his or her stay in the hospital. All patient trend data would be
17 stored, in a particular memory card and continuously upgraded at
18 appropriate intervals (Maschke 8:38-47).

19 12. Maschke describes its communication channels to its sensors,
20 pods and cartridges. Multiple bus masters can access the
21 peripheral bus, under the control of an arbiter. The bus masters
22 include two DMA channels for transmitting commands to pods
23 and cartridges and for receiving sample data from the pods and
24 cartridges; and a DMA channel for transmitting data to a thermal
25 recorder (Maschke 8:63 – 9:6). The commands sent to the pods

1 and cartridges may also include timing information (Maschke
2 9:37-44).

3 *Jacobsen*

4 13. Jacobsen is directed to monitoring physical activity of a person
5 with sensors on part of the person for measuring a magnitude and
6 relative direction of acceleration of movement of the body part
7 and a processor for receiving, converting and interpreting the
8 signal (Jacobsen 2:63 – 3:4).

9 14. Jacobsen's physiological sensor is in communication with the
10 processing device preferably by means of a wireless local area
11 network relative to the body of the user (Jacobsen 3:52-54).

12 15. Jacobsen describes two-way vocal communication between a
13 central station and a patient (Jacobsen 7:6-16).

14 *Fuchs*

15 16. Fuchs is directed to displaying physiological signals acquired
16 from a patient by receiving at a central station physiological
17 signals acquired from a patient; and arranging a display area
18 dedicated for displaying those physiological signals, and a second
19 display area, located adjacent said first display area, for displaying
20 a user generated message related to the physiological signals
21 (Fuchs 1:66 – 2:9).

22 17. Fuchs describes how central stations typically remotely
23 annunciate alarms for assigned bedsides, thereby alerting the
24 clinical staff to a potential emergency, and allow remote control of

1 bedside physiological alarm limits and bedside alarm silencing
2 (Fuchs 1:30-34).

3 *Gombrich*

4 18. Gombrich is directed to processing and storing patient data
5 using an identification device for identification of the patient that
6 includes a patient-unique code and second identification devices
7 for relating various items to a particular patient, the second
8 identification devices including a patient-unique code different
9 from that of the first identification device so as to differentiate
10 first and second identification devices from each other. Gombrich
11 includes an RF transceiver for transmitting bar code data and
12 terminals that are located remotely from the computer (Gombrich
13 2:5-32).

14 *Ballantyne*

15 19. Ballantyne is directed to an automated system for distribution
16 and administration of medical services, entertainment services,
17 electronic health records and the like for hospitals, other health
18 care facilities, including the patient's bedside in a hospital or at the
19 patient's domestic premises (Ballantyne 1:57-62).

20 *Gallant*

21 20. Gallant is directed to monitoring physiologic parameters,
22 including blood pressure, within a living subject. Gallant uses a
23 monitoring station having means by which the blood pressure,
24 electrocardiogram (ECG) and heart rate, and weight of the subject

1 may be measured concurrently during a predetermined monitoring
2 interval, and transmitted if desired to a remote location such as a
3 medical facility for analysis or evaluation by a medical
4 professional (Gallant3:53-65).

5 21. Gallant describes voice over internet protocol (VOIP) as being
6 well known (Gallant 21:24-29).

7 *Facts Related To The Level Of Skill In The Art*

8 22. Neither the Examiner nor the Appellants has addressed the level
9 of ordinary skill in the pertinent arts of medical systems, medical
10 diagnostics and diagnostic systems, data communications,
11 computer systems, design, and programming, physiological data
12 acquisition, and hospital administration and systems. We will
13 therefore consider the cited prior art as representative of the level
14 of ordinary skill in the art. *See Okajima v. Bourdeau*, 261 F.3d
15 1350, 1355 (Fed. Cir. 2001) (“[T]he absence of specific findings
16 on the level of skill in the art does not give rise to reversible error
17 ‘where the prior art itself reflects an appropriate level and a need
18 for testimony is not shown’”) (quoting *Litton Indus. Prods., Inc. v.*
19 *Solid State Sys. Corp.*, 755 F.2d 158, 163 (Fed. Cir. 1985).

20 23. One of ordinary skill in the hospital administration arts knew
21 that some patients having very critical and life threatening
22 emergency conditions would enter a hospital for emergency
23 diagnosis and treatment prior to a formal admissions process.

Facts Related To Secondary Considerations

24. There is no evidence on record of secondary considerations of non-obviousness for our consideration.

PRINCIPLES OF LAW

Claim Construction

During examination of a patent application, pending claims are given their broadest reasonable construction consistent with the specification. *In re Prater* , 415 F.2d 1393, 1404-05 (CCPA 1969); *In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1369, (Fed. Cir. 2004).

Limitations appearing in the specification but not recited in the claim are not read into the claim. *E-Pass Techs., Inc. v. 3Com Corp.*, 343 F.3d 1364, 1369 (Fed. Cir. 2003) (claims must be interpreted “in view of the specification” without importing limitations from the specification into the claims unnecessarily)

Although a patent applicant is entitled to be his or her own lexicographer of patent claim terms, in *ex parte* prosecution it must be within limits. *In re Corr*, 347 F.2d 578, 580 (CCPA 1965). The applicant must do so by placing such definitions in the Specification with sufficient clarity to provide a person of ordinary skill in the art with clear and precise notice of the meaning that is to be construed. *See also In re Paulsen*, 30 F.3d 1475, 1480 (Fed. Cir. 1994) (although an inventor is free to define the specific terms used to describe the invention, this must be done with reasonable clarity, deliberateness, and precision; where an inventor chooses to give terms

1 uncommon meanings, the inventor must set out any uncommon definition in
2 some manner within the patent disclosure so as to give one of ordinary skill
3 in the art notice of the change).

4 *Obviousness*

5 A claimed invention is unpatentable if the differences between it and
6 the prior art are “such that the subject matter as a whole would have been
7 obvious at the time the invention was made to a person having ordinary skill
8 in the art.” 35 U.S.C. § 103(a) (2000); *KSR Int’l v. Teleflex Inc.*, 127 S.Ct.
9 1727 (2007); *Graham v. John Deere Co.*, 383 U.S. 1, 13-14 (1966).

10 In *Graham*, the Court held that that the obviousness analysis is
11 bottomed on several basic factual inquiries: “[1)] the scope and content of
12 the prior art are to be determined; [(2)] differences between the prior art and
13 the claims at issue are to be ascertained; and [(3)] the level of ordinary skill
14 in the pertinent art resolved.” 383 U.S. at 17. *See also KSR Int’l v. Teleflex*
15 *Inc.*, 127 S.Ct. at 1734. “The combination of familiar elements according to
16 known methods is likely to be obvious when it does no more than yield
17 predictable results.” *KSR*, at 1739.

18 “When a work is available in one field of endeavor, design incentives
19 and other market forces can prompt variations of it, either in the same field
20 or a different one. If a person of ordinary skill can implement a predictable
21 variation, § 103 likely bars its patentability.” *Id.* at 1740.

22 “For the same reason, if a technique has been used to improve one
23 device, and a person of ordinary skill in the art would recognize that it would
24 improve similar devices in the same way, using the technique is obvious
25 unless its actual application is beyond his or her skill.” *Id.*

1 “Under the correct analysis, any need or problem known in the field
2 of endeavor at the time of invention and addressed by the patent can provide
3 a reason for combining the elements in the manner claimed.” *Id.* at 1742.

4 *Automation of a Known Process*

5 It is generally obvious to automate a known manual procedure or
6 mechanical device. Our reviewing court stated in *Leapfrog Enterprises Inc.*
7 *v. Fisher-Price Inc.*, 485 F.3d 1157 (Fed. Cir. 2007) that one of ordinary
8 skill in the art would have found it obvious to combine an old
9 electromechanical device with electronic circuitry “to update it using
10 modern electronic components in order to gain the commonly understood
11 benefits of such adaptation, such as decreased size, increased reliability,
12 simplified operation, and reduced cost. . . . The combination is thus the
13 adaptation of an old idea or invention . . . using newer technology that is
14 commonly available and understood in the art.” *Id.* at 1163.

15 *Obviousness and Nonfunctional Descriptive Material*

16 Nonfunctional descriptive material cannot render nonobvious an
17 invention that would have otherwise been obvious. *In re Ngai*, 367 F.3d
18 1336, 1339 (Fed. Cir. 2004). Cf. *In re Gulack*, 703 F.2d 1381, 1385 (Fed.
19 Cir. 1983) (when descriptive material is not functionally related to the
20 substrate, the descriptive material will not distinguish the invention from the
21 prior art in terms of patentability).

ANALYSIS

*Claims 1-7, 9, 12-14, and 18-22 rejected under 35 U.S.C. § 103(a)
as unpatentable over Maschke and Jacobsen.*

The Appellants argue claims 1-7, 9, 12-13, and 19-22 as a group. The Appellants apply the same arguments made in support of claim 1 to claims 2-7, 9, 12-14, and 18-22 (Br. 10:Top ¶ and 11:Second full ¶), but argue claims 14 and 18 separately. We therefore treat claims 1-7, 9, 12-13, and 19-22 as being argued as a group.

Accordingly, we select claim 1 as representative of the group.
37 C.F.R. § 41.37(c)(1)(vii) (2007).

The Examiner found that Maschke described all the limitations in claim 1, except for a wireless LAN. The Examiner found that Jacobsen described the use of a wireless LAN in medical diagnostics and that one of ordinary skill would have known that the medical diagnostics technology in Jacobsen would have been applicable to Maschke's medical diagnostics. The Examiner concluded it would have been obvious to a person of ordinary skill in the art to have applied Jacobsen to Maschke (Answer 5-6).

The Appellants contend that Maschke fails to describe the WLAN output to transmit care parameters in element [1] (Br. 7:Last full ¶) and the input device to allow a change in the care parameters in element [4] (Br. 9:First full ¶). The Appellants do not make any contention as to elements [2] and [3].

We agree with the Examiner that the combination of Maschke and Jacobsen describe all of the limitations in claim 1. First, we find that Maschke does describe uncontested limitations [2] and [3], viz. a processor

1 and display (FF 05). The inputs in element [1] are uncontested and we find
2 that these are described and portrayed (FF 06). Although Maschke does not
3 describe a wireless LAN, it does describe using wireless communication for
4 its inputs (FF 07) and connecting the monitors by LAN's (FF 09). As the
5 Examiner found, Jacobsen describes using a WLAN for patient data input to
6 a monitor device (FF 14). Thus, the combination of Maschke and Jacobsen
7 describe the input of element [1] and elements [2] and [3].

8 The Appellants admit that Maschke have outputs to the pods and
9 cartridges (Br. 8:Third full ¶). The Appellants argue that these outputs
10 convey only commands and timing information and that Maschke is not
11 bidirectional. We take this to mean that the Appellants are arguing that
12 Maschke does not send the particular data referred to in element [1], *viz.* care
13 parameters, since the Appellants agree some data flows both in and out.

14 We disagree with the Appellants, and even were we to agree, such an
15 argument could not show patentability of claim 1. Maschke sends
16 commands and timing information to the pods and cartridges (FF 12). The
17 pods and cartridges acquire patient data (FF 04). We find that such
18 commands and timing information are within the scope of care parameters.
19 The Specification contains no lexicographic definition of care parameters
20 (FF 03), and the usual and customary meaning is simply parameters
21 regarding care. Since the commands and timing parameters sent to the pods
22 and cartridges govern the operation of patient data acquisition, which is in
23 turn directly related to patient care, any such commands and timing
24 information are necessarily parameters regarding care. And since Maschke

1 both receives and sends data from and to the pods and cartridges, Maschke's
2 monitor is a bidirectional device.

3 But we further find that, since the scope of claim 1 is an apparatus, the
4 limitation in claim 1 is simply a communication interface having an input
5 and output. Although element [1] describes data that may pass through the
6 input and output, nothing in a communication interface would generate such
7 data. Therefore the scope of element [1] is electrical wireless LAN structure
8 capable of passing such data as input and output (FF 01). Since Maschke
9 passes information both in and out from the connections to the pods and
10 cartridges, Maschke clearly describes such a structure. The Appellants'
11 arguments regarding the specific type of data passed cannot impart
12 patentability to the apparatus in claim 1. Therefore, we find that element [1]
13 is described by the combination of Maschke and Jacobsen.

14 Now to the input device element [4]. The Examiner found that
15 Maschke's card containing setup data and patient data was such an input
16 device (Answer 26). The Appellants argue that the data on the card are
17 never sent to the output as required by element [1] (Br. 9:Last full ¶).

18 We agree that Maschke does describe an input device as required by
19 element [4]. The Examiner is correct in that Maschke describes using the
20 card to enter patient data by retrieval from the card (FF 10). Nothing in
21 claim 1 requires that the parameters that might pass through the output of
22 element [1] are the same parameters that are allowed to be changed in
23 element [4]; each may be a disparate subset of the parameters. More
24 critically, element [4] is yet another structural limitation, requiring only that
25 the structure allow change, not that such change actually occur (FF 02).

1 Clearly any data on Maschke's random access card is allowed to be edited in
2 the conventional manner of editing data on a random access card,
3 particularly using Maschke's intelligent workstation embodiment (FF 05).
4 Therefore, we find that element [4] is described by the combination of
5 Maschke and Jacobsen.

6 *Claim 14*

7 Claim 14 requires programming to receive reports and diagnostic
8 analyses at other locations to provide them in real time. The Examiner
9 found that Maschke had such programming as a result of displaying results
10 from its sensors (Answer 27). The Appellants contend that claim 14 requires
11 more than receiving sensor data and that the combined references fail to
12 describe claim 14 (Br. 10).

13 We agree that Maschke's reception and immediate display of patient
14 data presents reports and diagnostic analyses provided in real time by virtue
15 of displaying the patient's physiological data (FF 08). Such a display
16 presents both a report and a diagnostic analysis, since the presentation itself
17 acts to report the data and the graphic expression of the data is a diagnostic
18 analysis.

Claim 18

Claim 18 is an independent claim directed to a system with essentially the same limitations as the monitor in claim 1. The Examiner and the Appellants repeated their findings and contentions from claim 1 *supra*. We therefore find that the Appellants have not sustained their burden of showing error on the part of the Examiner for the same reasons we found in claim 1.

The Appellants have not sustained their burden of showing that the Examiner erred in rejecting claims 1-7, 9, 12-14, and 18-22 under 35 U.S.C. § 103(a) as unpatentable over Maschke and Jacobsen.

*Claims 8, 26, 28, and 29 rejected under 35 U.S.C. § 103(a)
as unpatentable over Maschke, Jacobsen, and Fuchs.*

The Appellants do not separately argue claims 26 and 28. Therefore we take the Appellants to have relied on the arguments in support of claim 29, depending from claim 26. We therefore treat claims 26, 28, and 29 as being argued as a group.

Claims 8 and 29 require patient admission and discharge information. Claim 8 requires admitting and discharging functions while claim 29 relays such information to the WLAN. Claim 8 also silences an alarm. The Examiner found that Maschke described the use of alarms and that Fuchs described remote silencing of alarms (Answer 12-13). The Examiner also found that Maschke suggested the limitations regarding admissions and discharge (Answer 29). The Appellants contend that Maschke merely describes retaining information between admission and discharge, not performing the admission and discharge steps or relaying such information to the WLAN (Br. 11-12 and 13-15). There is no argument regarding the

1 limitation of silencing an alarm, and we find that Fuchs describes such
2 silencing (FF 17).

3 We agree that the combination of Maschke, Jacobsen, and Fuchs would
4 have at least suggested programming to allow admission and discharge and
5 relaying such information to the WLAN. Fuchs, like Maschke, displays
6 patient physiological data, but also displays user generated messages (FF
7 16). Thus, Fuchs adds the capacity for a caregiver to enter textual data into
8 Maschke's system, which in turn is connected via LAN's to other systems.
9 Since one of ordinary skill knew that in emergency care, some patients
10 would be so critical that they would have to go under diagnosis prior to
11 formal admissions (FF 23), it was known that such an admissions process
12 would occur subsequent to the start of data acquisition in Maschke. But
13 since Maschke describes data collection from admissions to discharge (FF
14 11), the capacity of entering data such as admissions and discharge data
15 added by Fuchs would have suggested adding that particular capacity for the
16 purpose of ensuring that the data collected by Maschke's system did in fact
17 cover everything from admissions to discharge. Since such a data entry
18 would have required transmission to the hospital computer, this would have
19 necessitated relaying through a WLAN as suggested by Jacobsen.

20 The Appellants have not sustained their burden of showing that the
21 Examiner erred in rejecting claims 8, 26, 28, and 29 under 35 U.S.C.
22 § 103(a) as unpatentable over Maschke, Jacobsen, and Fuchs.

23

24

1 *Claim 10 rejected under 35 U.S.C. § 103(a) as unpatentable over*
2 *Maschke, Jacobsen, Ballantyne, and Gallant.*

3
4 Claim 10 requires programming for voice over internet protocol (VOIP).
5 The Examiner found that VOIP was already well known at the time of the
6 invention and provided Gallant as evidence (Answer 29-30; FF 21). The
7 Appellants argue¹ that mere notoriety would not have provided the
8 motivation to add VOIP to the remaining references (Br. 12). We agree with
9 the Examiner that the combination of the applied references would have
10 suggested using any conventional vocal communications mechanism, such
11 as VOIP. In particular, Jacobsen describes providing two-way vocal
12 communication between patient and station (FF 15). Since VOIP takes
13 advantage of the technology underlying a LAN such as used by Jacobsen, it
14 would have been obvious to a person of ordinary skill in the art to have
15 relied on VOIP for Jacobsen's oral communication.

16 The Appellants have not sustained their burden of showing that the
17 Examiner erred in rejecting claim 10 under 35 U.S.C. § 103(a) as
18 unpatentable over Maschke, Jacobsen, Ballantyne, and Gallant.

19 *Claims 11 and 24 rejected under 35 U.S.C. § 103(a) as unpatentable*
20 *over Maschke, Jacobsen, and Gombrich.*

21
22 The Appellants have not separately argued these claims, but referred to
23 their arguments in favor of claim 1 (Br. 10) as to claim 11 and of claim 21 as
24 to claim 24 (Br. 11), which we found to be insufficient to overcome their

¹ The Appellants refer to claim 8 rather than claim 10 in their argument (Br. 12:Rejection of Claim 10 Under 35 USC § 103). We take this to be a typographic error and treat the argument as referring to claim 10.

1 burden. Therefore we find the Appellants have not sustained their burden of
2 showing that the Examiner erred in rejecting claims 11 and 24 under 35
3 U.S.C. § 103(a) as unpatentable over Maschke, Jacobsen, and Gombrich for
4 the same reasons as we found for parent claims 1 and 26.

5
6 *Claims 15-17 and 25 rejected under 35 U.S.C. § 103(a) as*
7 *unpatentable over Maschke, Jacobsen, and Ballantyne.*
8

9 The Appellants have not separately argued these claims, but referred to
10 their arguments in favor of claim 1 (Br. 10) as to claims 15-17 and of claim
11 21 as to claim 25 (Br. 11), which we found to be insufficient to overcome
12 their burden. Therefore we find the Appellants have not sustained their
13 burden of showing that the Examiner erred in rejecting claims 15-17 and 25
14 under 35 U.S.C. § 103(a) as unpatentable over Maschke, Jacobsen, and
15 Ballantyne.

16 *Claim 23 rejected under 35 U.S.C. § 103(a) as unpatentable over*
17 *Maschke, Jacobsen, Ballantyne, Gallant, and Fuchs.*
18

19 The Appellants have not separately argued this claim, but referred to
20 their arguments in favor of claim 21 (Br. 11), which we found to be
21 insufficient to overcome their burden. Therefore we find the Appellants
22 have not sustained their burden of showing that the Examiner erred in
23 rejecting claim 23 under 35 U.S.C. § 103(a) as unpatentable over Maschke,
24 Jacobsen, Ballantyne, Gallant, and Fuchs.

25 *Claims 27 and 31 rejected under 35 U.S.C. § 103(a) as unpatentable*
26 *over Maschke, Jacobsen, Fuchs, and Gombrich.*
27

28 The Appellants have not separately argued these claims. Therefore we
29 consider the patentability of these claims to depend on the arguments in

1 support of their parent claims, which we found to be insufficient to
2 overcome their burden. We find the Appellants have not sustained their
3 burden of showing that the Examiner erred in rejecting claims 27 and 31
4 under 35 U.S.C. § 103(a) as unpatentable over Maschke, Jacobsen, Fuchs,
5 and Gombrich for the same reasons as their parent claim 26.

6 *Claim 30 rejected under 35 U.S.C. § 103(a) as unpatentable over*
7 *Maschke, Jacobsen, Fuchs, and Ballantyne.*

8 The Appellants have not separately argued this claim. Therefore we
9 consider the patentability of this claim to depend on the arguments in
10 support of its parent claims, which we found to be insufficient to overcome
11 their burden. We find the Appellants have not sustained their burden of
12 showing that the Examiner erred in rejecting claim 30 under 35 U.S.C. §
13 103(a) as unpatentable over Maschke, Jacobsen, Fuchs, and Ballantyne for
14 the same reasons as their parent claim 26.

15 CONCLUSIONS OF LAW

16 The Appellants have not sustained their burden of showing that the
17 Examiner erred in rejecting claims 1-31 under 35 U.S.C. § 103(a) as
18 unpatentable over the prior art.

19 On this record, the Appellants are not entitled to a patent containing
20 claims 1-31.

21 DECISION

22 To summarize, our decision is as follows:

- The rejection of claims 1-7, 9, 12-14, and 18-22 under 35 U.S.C. § 103(a) as unpatentable over Maschke and Jacobsen is sustained.
- The rejection of claims 8, 26, 28, and 29 under 35 U.S.C. § 103(a) as unpatentable over Maschke, Jacobsen, and Fuchs is sustained.
- The rejection of claim 10 under 35 U.S.C. § 103(a) as unpatentable over Maschke, Jacobsen, Ballantyne, and Gallant is sustained.
- The rejection of claims 11 and 24 under 35 U.S.C. § 103(a) as unpatentable over Maschke, Jacobsen, and Gombrich is sustained.
- The rejection of claims 15-17 and 25 under 35 U.S.C. § 103(a) as unpatentable over Maschke, Jacobsen, and Ballantyne is sustained.
- The rejection of claim 23 under 35 U.S.C. § 103(a) as unpatentable over Maschke, Jacobsen, Ballantyne, Gallant, and Fuchs is sustained.
- The rejection of claims 27 and 31 under 35 U.S.C. § 103(a) as unpatentable over Maschke, Jacobsen, Fuchs, and Gombrich is sustained.
- The rejection of claim 30 under 35 U.S.C. § 103(a) as unpatentable over Maschke, Jacobsen, Fuchs, and Ballantyne is sustained.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

vsh

Appeal 2008-1360
Application 09/689,374

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